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ATTORNEYS FOR GRUMA CORPORATION D/B/A MISSION FOODS

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:

MI PUEBLO SAN JOSE INC.,

Debtor.

Case No. 13-53893-ASW

Chapter 11

**MOTION OF GRUMA CORPORATION
D/B/A MISSION FOODS FOR
ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM
PURSUANT TO 11 U.S.C. § 503(B)(9)**

Gruma Corporation d/b/a Mission Foods ("Gruma") hereby files this *Motion for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)(9)* (the "Motion") and would respectfully show the Court as follows:

JURISDICTION AND VENUE

1. Pursuant to 28 U.S.C. §§ 157 and 1334, the Court has jurisdiction over this Motion and the relief requested herein. Pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), and (O), this

1 Motion presents a core proceeding. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408
2 and 1409.

3 2. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 503(a),
4 503(b)(9), and 507(a)(2).

5 **BACKGROUND**

6
7 3. Gruma was a supplier of goods to Mi Pueblo San Jose, Inc. (the “Debtor”) prior to
8 the commencement of this bankruptcy proceeding.

9 4. On July 22, 2013 (the “Petition Date”), the Debtor commenced the above-
10 captioned case by filing a voluntary petition for relief under Title 11 of Chapter 11 of the United
11 States Code (the “Bankruptcy Code”).

12 5. The Debtor is a retail grocery store chain. Prior to the Petition Date, Gruma sold
13 certain products (the “Goods”) to the Debtor in the ordinary course of the Debtor’s business that
14 the Debtor sells at its various stores.

15
16 6. The invoice summary, invoices, and product receipts (which include electronic
17 signatures acknowledging acceptance of product by store personnel) attached hereto as
18 **Exhibit A** demonstrate that Gruma provided the Goods to the Debtor, and that the Goods were
19 received by the Debtor during the 20 days before the Petition Date.

20
21 7. The total amount due to Gruma for the Goods shipped to and received by the
22 Debtor during the 20 days prior to the Petition Date is **\$294,041.34**.

23 8. The Debtor has not paid Gruma for the Goods.

24 **RELIEF REQUESTED**

25 9. Pursuant to 11 U.S.C. § 503(b)(9), after notice and a hearing, there shall be
26 allowed an administrative expense claim for “the value of any goods received by the debtor
27
28

1 within 20 days before the date of the commencement of a case under this title in which the goods
2 have been sold to the debtor in the ordinary course of such debtor's business."

3 10. The Debtor received the Goods provided by Gruma within 20 days before the
4 commencement of this case.

5 11. Gruma sold the Goods to the Debtor in the ordinary course of the Debtor's
6 business.

7 12. Therefore, Gruma requests the allowance and payment of its claim as an
8 administrative expense claim pursuant to 11 U.S.C. § 503(b)(9) and in accordance with the 20-
9 day claims process established by the Court in its order dated July 31, 2013 [Dkt No. 74]
10 (the "July 31 Order").

11 13. Gruma reserves its right to (A) request allowance and/or payment of any
12 additional administrative expenses that are or may become due during this case, (B) further
13 participate in the 20-day claims process ordered by the Court in its July 31 Order, and (C) file its
14 official proof of claim in this case for all outstanding pre-petition amounts due to it by the
15 Debtor.

16 14. The name and address where notices should be sent regarding this Motion is:

17
18 Bruce J. Zabarauskas
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1 -and-

2 David Salazar, Sr. Director – Legal Services
3 GRUMA CORPORATION
4 1159 Cottonwood Lane
5 Irving, TX 75038
6 Telephone: 972-232-5037
7 Email: dsalazarc@gruma.com

8 **WHEREFORE**, Gruma respectfully asks this Court to enter an Order (A) allowing
9 Gruma a Chapter 11 administrative expense claim pursuant to 11 U.S.C. § 503(b)(9) in the
10 amount of **\$294,041.34**; (B) ordering the Debtor to pay such allowed administrative expense
11 immediately as an undisputed claim pursuant to the provisions of the Code July 31 Order
12 governing distributions; and (C) granting Gruma such other and further relief as this Court deems
13 appropriate.

14 RESPECTFULLY SUBMITTED this 29th day of August, 2013.

15 By: /s/ Bruce J. Zabarauskas

16 **THOMPSON & KNIGHT LLP**

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**ATTORNEYS FOR GRUMA CORPORATION
D/B/A MISSION FOODS**

1 **CERTIFICATE OF SERVICE**

2 I, Katharine Battaia Clark, declare:

3 I am over the age of eighteen years and not a party to the within action. I am a member of
4 the bar of the State of Texas, and I am admitted *pro hac vice* in this Court. My business address
5 is Thompson & Knight LLP, 1722 Routh Street, Suite 1500, Dallas, Texas 75201.

6 On August 29, 2013, I served the document described as **MOTION OF GRUMA**
7 **CORPORATION D/B/A MISSION FOODS FOR ALLOWANCE AND PAYMENT OF**
8 **ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11 U.S.C. § 503(B)(9)** in this
9 action by placing a true and correct copy thereof in a sealed envelope in the United States Mail,
10 first class, postage prepaid on the parties indicated below and by the Court's CM/ECF system on
11 all parties consenting to service by same.

12 Court
13 Judge Arthur S. Weissbrodt
14 c/o Brook Esparza
15 United States Courthouse, Room 3035
16 280 South First Street
17 San Jose, CA 95113-3099

Special Counsel for Debtor
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San Jose, CA 95113-2375

18 Debtor
19 Mi Pueblo San Jose, Inc.
20 P.O. Box 3288
21 12 San Jose, CA 95156

United States Trustee
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22 Attorneys for Debtor
23 Heinz Binder, Esq.
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 29, 2013 at Dallas, Texas.

/s/ Katharine Battaia Clark
Katharine Battaia Clark